



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R04-RCRA-2019-0425; FRL-9998-61-Region 4]

North Carolina: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: North Carolina has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed North Carolina's application and has determined, subject to public comment, that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before *[insert date 30 days after the date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-RCRA-2019-0425, at <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *www.regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Thornell Cheeks, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8479; fax number: (404) 562-9964; e-mail address: cheeks.thornell@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be

necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, EPA will implement those requirements and prohibitions in North Carolina, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has EPA made in this proposed rule?

On June 4, 2019, North Carolina formally requested authorization of changes to its hazardous waste management program that correspond to certain Federal rules promulgated between July 1, 2004 and June 30, 2017 (including RCRA Clusters¹ XV, XVII, XX, XXIII, XXIV, XXV, and XXVI). EPA concludes that North Carolina's application² to revise its authorized program meets all of the statutory and regulatory requirements established under RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271.

Therefore, EPA proposes to grant North Carolina final authorization to operate its hazardous waste program with the changes described in the authorization application, and as outlined below

¹ A "cluster" is a grouping of hazardous waste rules that EPA promulgates from July 1st of one year to June 30th of the following year.

² As explained below in Section F, North Carolina's application is comprised of its January 4, 2019 submittal, as amended by its June 4, 2019 submittal.

in Section F of this document.

North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its program revision application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this proposed authorization decision?

If North Carolina is authorized for the changes described in North Carolina's authorization application, these changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. North Carolina will continue to have primary enforcement authority and responsibility for its State hazardous waste program. EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses, and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which EPA is proposing to authorize North Carolina are already effective under North Carolina State law and are not changed by today's proposed action.

D. What happens if EPA receives comments that oppose this action?

EPA will evaluate any comments received on this proposed action and will make a final

decision on approval or disapproval of North Carolina's proposed authorization. Our decision will be published in the *Federal Register*. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has North Carolina previously been authorized for?

North Carolina initially received final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694), to implement a hazardous waste management program. EPA granted authorization for changes to North Carolina's program on the following dates: March 25, 1986, effective April 8, 1986 (51 FR 10211); August 5, 1988, effective October 4, 1988 (53 FR 29460); February 9, 1989, effective April 10, 1989 (54 FR 6290); September 22, 1989, effective November 21, 1989 (54 FR 38993); January 18, 1991, effective March 19, 1991 (56 FR 1929); April 10, 1991, effective June 9, 1991 (56 FR 14474); July 19, 1991, effective September 17, 1991 (56 FR 33206); April 27, 1992, effective June 26, 1992 (57 FR 15254); December 12, 1992, effective February 16, 1993 (57 FR 59825); January 27, 1994, effective March 28, 1994 (59 FR 3792); April 4, 1994, effective June 3, 1994 (59 FR 15633); June 23, 1994, effective August 22, 1994 (59 FR 32378); November 10, 1994, effective January 9, 1995 (59 FR 56000); September 27, 1995, effective November 27, 1995 (60 FR 49800); April 25, 1996, effective June 24, 1996 (61 FR 18284); October 23, 1998, effective December 22, 1998 (63 FR 56834); August 25, 1999, effective October 25, 1999 (64 FR 46298); February 28, 2002, effective April 29, 2002 (67 FR 9219); December 14, 2004, effective February 14, 2005 (69 FR 74444); March 23, 2005, effective May 23, 2005 (70 FR 14556); February 7, 2011, effective April 8, 2011 (76 FR 6561); June 14, 2013, effective August 13, 2013 (78 FR 35766); and August 24, 2015, effective October 23, 2015 (80 FR 51141).

F. What changes are we proposing with today's action?

On June 4, 2019, North Carolina formally requested authorization, in accordance with 40 CFR 271.21, of changes to its hazardous waste management program associated with Checklists³ 206.1, 207.1, 215, 222, and 230 through 238. The June 4, 2019 submittal amended North Carolina's initial program revision application with respect to these checklists, dated January 4, 2019, with revised Checklists 206.1, 207.1, 236, and 237; a revised "Summary of RCRA Clusters and Checklists Submitted;" a modified Program Description; and a Statutory Checklist. The January 4, 2019 submittal, as amended by the June 4, 2019 submittal, constitutes a complete program revision application. EPA proposes to determine, subject to receipt of written comments that oppose this action, that North Carolina's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, EPA is proposing to authorize North Carolina for the following program changes:

³ A "checklist" is developed by EPA for each Federal rule amending the RCRA regulations. The checklists document the changes made by each Federal rule and are presented and numbered in chronological order by date of promulgation.

Description of Federal Requirement		Federal Register Date and Page	Analogous State Authority*
Checklist 206.1, Nonwastewaters from Dyes and Pigments (Corrections)		70 FR 35032 6/16/05	15A NCAC 13A .0106(d).
Checklist 207.1, Corrections; Uniform Hazardous Waste Manifest Rule ⁴		70 FR 35034 6/16/05	15A NCAC 13A .0107(b) & (j); 15A NCAC 13A .0109(f); and 15A NCAC 13A .0110(e).
Checklist 215, Cathode Ray Tubes Rule ⁵		71 FR 42928 7/28/06	15A NCAC 13A .0102(b); and 15A NCAC 13A .0106(a) & (e).
Checklist 222, OECD Requirements; Export Shipments of Spent Lead-Acid Batteries ⁶		75 FR 1236 1/8/10	15A NCAC 13A .0101(b); 15A NCAC 13A .0107(a) & (f); 15A NCAC 13A .0108(a); 15A NCAC 13A .0109(c) & (f); 15A NCAC 13A .0110(b) & (e); and 15A NCAC 13A .0111(c).
Checklist 230, Conditional Exclusion for Carbon Dioxide (CO ₂) Streams in Geologic Sequestration Activities		79 FR 350 1/3/14	15A NCAC 13A .0102(b) and 15A NCAC 13A .0106(a).
Checklist 231, Hazardous Waste Electronic Manifest Rule ⁷		79 FR 7518 2/7/14	15A NCAC 13A .0101(b) & (d); 15A NCAC 13A .0102(b); 15A NCAC 13A .0107(b); 15A NCAC 13A .0108(b); 15A NCAC 13A .0109(f); and 15A NCAC 13A .0110(e).
Checklist 232, Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule		79 FR 36220 6/26/14	15A NCAC 13A .0101(b); 15A NCAC 13A .0102(b); and 15A NCAC 13A .0106(e).
Checklist 233, Revisions to the Definition of Solid Waste and	233A	80 FR 1694 1/13/15	15A NCAC 13A .0103(c).
	233B		15A NCAC 13A .0102(b) & (c); 15A NCAC 13A .0103(c); and 15A NCAC 13A .0106(a).

⁴ Some provisions contained in this Rule were subsequently amended or removed by Checklist 231 (Hazardous Waste Electronic Manifest Rule), for which EPA is also authorizing North Carolina at this time, and Checklist 239 (Hazardous Waste Electronic Manifest User Fee Rule), for which EPA is not authorizing North Carolina at this time.

⁵ Some provisions contained in this Rule were subsequently amended by Checklist 232 (Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule), for which EPA is also authorizing North Carolina at this time.

⁶ Some provisions contained in this Rule were subsequently amended or removed by Checklist 236 (Import and Exports of Hazardous Waste), for which EPA is also authorizing North Carolina at this time.

⁷ Some provisions contained in this Rule were subsequently amended or removed by Checklist 239 (Hazardous Waste Electronic Manifest User Fee Rule), for which EPA is not authorizing North Carolina at this time.

Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule	233C	83 FR 24664 5/30/18	15A NCAC 13A .0106(a).
	233D2		15A NCAC 13A .0101(b); 15A NCAC 13A .0102(b); 15A NCAC 13A .0103(c); 15A NCAC 13A .0106(a), (f), & (i); and 15A NCAC .0113(g).
	233E		15A NCAC 13A .0102(b); and 15A NCAC 13A .0106(a), (g), (h), (j), (k), & (l).
Checklist 234, Vacatur of the Comparable Fuels Rule and the Gasification Rule		80 FR 18777 4/8/15	15A NCAC 13A .0102(b) and 15A NCAC 13A .0106(a) & (e).
Checklist 235, Disposal of Coal Combustion Residuals from Electric Utilities		80 FR 21302 4/17/15	15A NCAC 13A .0106(a).
Checklist 236, Imports and Exports of Hazardous Waste ⁸		81 FR 85696 11/28/16 82 FR 41015 8/29/17	15A NCAC 13A .0101(e); 15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a) & (e); 15A NCAC 13A .0107(a), (d), (f), & (j); 15A NCAC 13A .0108(a) & (b); 15A NCAC 13A .0109(c) & (f); 15A NCAC 13A .0110(b) & (e); 15A NCAC 13A .0111(b) & (c); and 15A NCAC 13A .0119(b), (c), (d), (e), & (f).
Checklist 237, Hazardous Waste Generator Improvements Rule		81 FR 85732 11/28/16	15A NCAC 13A .0101(d) & (e); 15A NCAC 13A .0102(b); 15A NCAC 13A .0106(a), (d), & (i); 15A NCAC 13A .0107(a), (b), (c), (d), (g), (h), & (i); 15A NCAC 13A .0108(a); 15A NCAC 13A .0109(b), (c), (f), (j), (k), (v), (w), & (y); 15A NCAC 13A .0110(a), (b), (e), (i), (j), (s), (t), & (v); 15A NCAC 13A .0111(c) & (f); 15A NCAC 13A .0112(a) & (e); 15A NCAC 13A .0113(a) & (g); 15A NCAC 13A .0118(b); and 15A NCAC 13A .0119(a) & (g).
Checklist 238, Confidentiality Determinations for Hazardous Waste Export and Import Documents		82 FR 60894 12/26/17	15A NCAC 13A .0101(d); 15A NCAC 13A .0106(e); and 15A NCAC 13A .0107(f).

* The North Carolina regulatory citations are from the North Carolina Administrative Code (NCAC), effective March 1, 2018.

⁸ Some provisions contained in this Rule were subsequently amended or removed by Checklist 237 (Hazardous Waste Generator Improvements Rule), for which EPA is also authorizing North Carolina at this time.

G. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive Federal authorization for such regulations, and they are not federally enforceable.

EPA has determined that certain regulations included in North Carolina's program revision application are more stringent than the Federal program. These more stringent requirements will become part of the federally enforceable RCRA program in North Carolina when authorized.

First, the North Carolina definition for "contained" at 15A NCAC 13A .0102(c) is more stringent than the Federal definition at 40 CFR 260.10 because it adds the italicized language at the end of the following sentence: "The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials *or hazardous constituents originating from the hazardous secondary materials....*" Compare 15A NCAC 13A .0102(c) with 40 CFR 260.10.

Second, North Carolina's program is more stringent at 15A NCAC 13A .0107(a) and (i), the State analogs to 40 CFR 262.16(b)(8)(v) and 40 CFR 262.255. The North Carolina provisions require small quantity and large quantity generators to maintain aisle space of at least

two feet in a central accumulation area. The Federal program requires small quantity and large quantity generators to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes, but does not specify a minimum amount of space.

It should be noted that states cannot receive authorization for certain Federal regulatory functions included in the regulations associated with the Hazardous Waste Electronic Manifest Rule (Checklist 231). Although North Carolina has adopted these regulations to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references. *See* 15A NCAC 13A .0101(b).

States also cannot receive authorization for certain Federal regulatory functions included in the regulations involving international shipments (*i.e.*, import and export provisions) associated with the Cathode Ray Tubes Rule (Checklist 215), the OECD Requirements for Export Shipments of Spent Lead-Acid Batteries Rule (Checklist 222), the Revisions to the Export Provisions of the CRT Rule (Checklist 232), the Imports and Exports of Hazardous Waste Rule (Checklist 236), and the Confidentiality Determinations for Hazardous Waste Export and Import Documents Rule (Checklist 238). Although North Carolina has also adopted these rules to maintain its equivalency with the Federal program, it has appropriately maintained the Federal references. *See* 15A NCAC 13A .0101(b).

H. Who handles permits after the final authorization takes effect?

When final authorization takes effect, North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue

to administer any RCRA hazardous waste permits or portions of permits that EPA issued prior to the effective date of authorization until they expire or are terminated. EPA will not issue any new permits or new portions of permits for the provisions listed in the table above after the effective date of the final authorization. EPA will continue to implement and issue permits for HSWA requirements for which North Carolina is not yet authorized. EPA has the authority to enforce State-issued permits after the State is authorized.

I. How does today's proposed action affect Indian country (18 U.S.C. 1151) in North Carolina?

North Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Eastern Band of Cherokee Indians. EPA will continue to implement and administer the RCRA program on these lands.

J. What is codification and will EPA codify North Carolina's hazardous waste program as proposed in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of North Carolina's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart II for the authorization of North Carolina's program changes at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the

requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action proposes to authorize State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's proposed authorization of North Carolina's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action proposes to authorize pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not

subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in proposing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States. Because this action proposes authorization of pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this proposed rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: August 5, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

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